

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

TRISHAWDA DAVIS, A Minor, By
Her Grandmother and Next Friend,
Emma Skinner

Plaintiff

V.

NO. 2:97CV62-B-B

NORTH BOLIVAR SCHOOL DISTRICT;
MAURICE SMITH, in his individual
and official capacities; RONZY
HUMPHREY, in his individual and
official capacities; and MYRA
BRADFIELD, in her individual and
official capacities.

MEMORANDUM OPINION

This cause comes before the court upon the motions of defendants Smith, Humphrey, and Bradfield to dismiss with prejudice, as well as the plaintiff's motion to dismiss without prejudice her claims against all defendants except Bradfield. The court has duly considered the parties' memoranda and exhibits and is ready to rule.

FACTS

In considering a motion to dismiss, the district court must accept all well-pleaded facts as true and view them in the light most favorable to the non-moving party. Baker v. Putnal, 75 F.3d 190, 196 (5th Cir. 1996). Therefore, for purposes of these motions, the court will recite the facts as alleged in the plaintiff's complaint.

At the time of the alleged events, the plaintiff was a nine-year old fourth grader at Shelby Elementary in Bolivar County, Mississippi. Defendant Bradfield was the plaintiff's teacher. On September 17, 1996, a student in Bradfield's class told Bradfield that his/her watch was missing. Bradfield accused the plaintiff of taking the student's watch. She searched the plaintiff, but found nothing. Bradfield then directed two older students to escort the plaintiff to a public bathroom to conduct a strip search. Again, no watch was found. When the plaintiff began to cry as a result of her experience, Bradfield paddled her.

The plaintiff has filed suit against the teacher, principal, superintendent, and school district alleging federal causes of action for violation of Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972, as well as a violation of the plaintiff's Fourth

Amendment right to free from unreasonable search and seizure. The plaintiff further asserts causes of action under state tort law for violation of the plaintiff's right to privacy, assault, false arrest, and intentional infliction of emotional distress.

LAW

A. Defendant Bradfield

Title VI of the Civil Rights Act of 1964 provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. 42 U.S.C. § 2000(d). Defendant Bradfield asserts that the plaintiff has failed to allege any facts that would entitle her to relief under Title VI. The court concurs. Other than the mere mention of the term "Title VI," the plaintiff's complaint contains no allegation of any fact which would indicate that the plaintiff was the victim of racial discrimination. The plaintiff's complaint does not even set forth the race of the plaintiff or any of the individuals involved. Therefore, the court finds that the plaintiff's claim against defendant Bradfield for violation of Title VI should be dismissed.

Title IX of the Education Amendments of 1972 provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. 20 U.S.C. § 1681(a). Title IX claims may not be asserted against individuals. Garza v. Galena Park Ind. Sch. Dist., 914 F. Supp. 1437, 1438 (S.D. Tex. 1994). Therefore, the court finds that the plaintiff's claim against defendant Bradfield for violation of Title IX should be dismissed.

The defendant Bradfield asserts that the plaintiff has failed to allege a violation of a constitutional right so as to give rise to a cause of action under § 1983. Bradfield further asserts that even if the court finds that the plaintiff has asserted a claim, Bradfield is still entitled to qualified immunity for any claim asserted against her in her individual capacity. Qualified immunity shields state actors from civil liability if their conduct does not violate a clearly established constitutional right of which a reald, 457 U.S. 800, 818, 73 L. Ed. 2d 396, 410 (1982). Upon review of the plaintiff's complaint, the court concludes that the plaintiff has asserted against defendant Bradfield a violation of a clearly established constitutional right of which a reasonable person would have known and therefore, the defendant is not entitled to be dismissed on the grounds of qualified immunity.

The defendant Bradfield asserts that she is entitled to immunity under Miss. Code Ann. § 11-46-7(2) for any claims brought against her under state tort law. Miss. Code Ann. § 11-46-7(2) provides that an employee may be joined in an action against a governmental entity in a representative capacity, but no employee may be held personally liable for any act occurring within the course and scope of the employee's duties. The allegations of the complaint clearly assert that the defendant Bradfield was acting within the course and scope of her duties as a school teacher at Shelby Elementary during the time of the alleged events. Therefore, in accordance with Miss. Code Ann. § 11-46-7(2), the court finds that the defendant Bradfield is entitled to immunity for any claims brought against her individually under state tort law, and said

claims should be dismissed.

B. Defendants Smith and Humphrey in their Individual Capacities

For the reasons set forth above, the Title VI and Title IX claims against Smith and Humphrey should be dismissed. Furthermore, for the reasons set forth above, Smith and Humphrey are entitled to immunity for any claims brought against them under state tort law pursuant to Miss. Code Ann. § 11-46-7(2). The only remaining claim against Smith and Humphrey in their individual capacity is the plaintiff's claim under § 1983 for violation of the plaintiff's Fourth Amendment rights.

The defendants Smith and Humphrey move to dismiss the § 1983 claim brought against them in their individual capacity on the grounds of qualified immunity. As stated, qualified immunity shields state actors from civil liability if their conduct does not violate a clearly established constitutional right of which a reasonable person would have known. Harlow, 457 U.S. at 818, 73 L. Ed. 2d at 410. Qualified immunity is not just immunity from judgment, but rather is immunity from all aspects of suit. Jacquez v. Procunier, 801 F.2d 789, 791 (5th Cir. 1986).

To avoid dismissal, the plaintiff must plead specific facts which, if true, would defeat qualified immunity. Wicks v. Mississippi State Employment Servs., 41 F.3d 991, 994-997 (5th Cir. 1995), cert. denied, 515 U.S. 1131, 132 L. Ed. 2d 809 (1995). The plaintiff has failed to allege such facts against Smith and Humphrey. Based on the allegations of the complaint, it is clear that neither Smith nor Humphrey had any involvement in the alleged conduct of Bradfield. Humphrey is the principal of Shelby Elementary and Smith is the district superintendent. The plaintiff asserts in her complaint that Smith and Humphrey were responsible for providing an environment conducive to learning and proper psychological development. Such an allegation is insufficient to aver that the defendants violated a clearly established constitutional right of which a reasonable person would have known. Therefore, the court finds that Smith and Humphrey are entitled to qualified immunity for all claims asserted against them in their individual capacity.

The plaintiff further asserts that Smith and Humphrey, as supervisors of Bradfield, were responsible for her actions. However, it is well-established that individual defendants cannot be held liable under § 1983 on a theory of respondeat superior. Doe v. Taylor Indep. Sch. Dist., 15 F.3d 443, 452 (5th Cir. 1994), cert. denied, 513 U.S. 815, 130 L. Ed. 2d 25 (1994); see Monell v. Department of Social Servs., 436 U.S. 658, 690-694, 58 L. Ed. 2d 611, 635-638 (1978).

C. Defendants North Bolivar School District and Smith and Humphrey in their Official Capacities

In response to the defendants' motions to dismiss, the plaintiff has moved to dismiss without prejudice all claims against the defendants North Bolivar School District, Smith and Humphrey. For the reasons set forth above, the court finds that it should dismiss the claims brought against Smith and Humphrey in their individual capacities with prejudice. The court further finds that it should grant the plaintiff's request to dismiss the remaining claims against

North Bolivar School District, Smith and Humphrey without prejudice.

CONCLUSION

For the foregoing reasons, the court finds that the plaintiff's claims against defendant Bradfield under Title VI and Title IX, as well as the claims against Bradfield individually under state tort law should be dismissed with prejudice, the plaintiff's claims against defendants Smith and Humphrey in their individual capacity should be dismissed with prejudice, and the plaintiff's claims against defendant North Bolivar School District and defendants Smith and Humphrey in their official capacities should be dismissed without prejudice.

An order will issue accordingly.

THIS, the ____ day of October, 1997.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE